

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHELLE L. HENDRICKSON, as Administrator or
the Estate of Robert A. Hendrickson, Deceased,

Plaintiff,

REPORT AND
RECOMMENDATION

-against-

CV 08-4496 (DRH)(ETB)

UNITED STATES OF AMERICA,

Defendant.

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TO THE HONORABLE DENIS R. HURLEY, United States District Judge:

This is a wrongful death medical malpractice action against the United States, allegedly arising out of surgeries performed in 2007 at the Veterans' Administration Medical Center in Northport, New York.

This action was commenced in November 2008 by Michelle Hendrickson, as Administrator of the Estate of her deceased father, Robert A. Hendrickson. The plaintiff was represented by the Jacob D. Fuchsberg Law Firm, LLP. That law firm was relieved of professional responsibility for the prosecution of this action by Order dated June 23, 2010, based on irreconcilable differences in the legal strategy in this action and counsel's difficulties in communicating with the client, who by then was residing in a shelter in Atlantic City, New Jersey. The plaintiff, Michelle Hendrickson, was present in court and was afforded the opportunity to be heard on counsel's application to be relieved. Ms. Hendrickson was orally informed at that time -and in the written order dated June 23, 2010 - that since she was not an attorney-at-law, she was not permitted to proceed pro se in her capacity as administrator of her

father's estate, but rather was obliged to retain substitute counsel to prosecute this action. The action was adjourned to September 9, 2010 to afford the plaintiff the opportunity to bring in new counsel.

The plaintiff appeared by phone on September 9, 2010 and requested additional time to bring in new counsel. This action was adjourned to December 2, 2010 at 2:00 p.m. for that purpose. The plaintiff failed to appear on December 2, 2010 and has failed to otherwise communicate with the court.

It is clear that the plaintiff cannot proceed without counsel in this action. See, e.g. Pridgen v. Andresen, 113 F.3d 391, 393 (2d Cir. 1997) (“[A] person ordinarily may not appear pro se in the cause of another person or entity.”); Megna v. FDA, No. 08-CV-1435, 2009 U.S. Dist. LEXIS 21359, at *17 (E.D.N.Y. Mar. 17, 2009) (“[T]he Court recognizes that an administratrix or executrix of an estate may not proceed pro se when the estate has beneficiaries or creditors other than the litigant.”); Mandeville v. Wertheimer, No. 01 Civ. 4469, 2002 U.S. Dist. LEXIS 4628, at *5 (S.D.N.Y. Mar. 19, 2002) (“The general rule in federal court forbids representative parties, such as guardians or executors, from appearing pro se.”).

RECOMMENDATION

This action should be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure based on the plaintiff administrator's failure to obtain counsel to prosecute this case.

OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any written objections to this Report and Recommendation must be filed with the Clerk

of the Court, with a copy to the undersigned, within fourteen (14) days of service of this Report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Any requests for an extension of time for filing objections must be directed to the district judge assigned to this action prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections within fourteen (14) days will preclude further appellate review. Thomas v. Arn, 474 U.S. 140, 145 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 299-300 (2d Cir. 1992).

Defendant's counsel is directed to serve a copy of this Report and Recommendation on the pro se plaintiff upon receipt.

SO ORDERED:

Dated: Central Islip, New York
December 6, 2010

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge